No. 32

In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY AND HOFLA TRUCKING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
MALCOLM ANDERSON,
Assistant Attorney General,
RALPH S. SPRITZER,
Assistant to the Solicitor General,
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

CITATIONS

Cases:

Cases—Continued

Cases—Continued

Cases—Continued

Statutes and regulations:

Statutes and regulations—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 32

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY AND HOPLA TRUCKING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court wrote no opinions. The orders dismissing the informations are set forth at R. 19 and R. 27.

JURISDICTION

On November 13, 1957, the District Court dismissed the informations in these cases on the ground that, under the statutes involved, a partnership is not subject to criminal liability (R. 19, 27). Notices of appeal to this Court were filed in the District Court on December 9, 1957 (R. 20, 28), and probable jurisdiction was noted on March 31, 1958, 356 U. S. 917 (R. 31). The jurisdiction of this Court to review on direct appeal judg-

ments dismissing the informations, based on a construction of the statutes on which the informations were founded, is conferred by 18 U.S.C. 3731. *United States* v. *Borden Co.*, 308 U.S. 188, 193.

QUESTION PRESENTED

Whether a partnership, as a legal entity, is subject to criminal liability under the following statutes: (1) Section 222(a) of the Interstate Commerce Act (relating to violation of certification requirements and of I.C.C. motor carrier regulations); and (2) 18 U.S.C. 835 (relating to violation of regulations governing the safe transportation of explosives and other dangerous articles).

STATUTES INVOLVED

1. The Interstate Commerce Act, Part II (Motor Carrier Act of 1935, 49 Stat. 543, as amended), provides in pertinent part:

Section 222 (a) [49 U.S.C., Supp. V, 322 (a)]:

Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

* * * * *

Section 203 (a) [49 U.S.C. 303 (a)]:

As used in this part——

(1) the term "person" means any individual, firm, copartnership, corporation, company, asso-

ciation, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

* * * * *

Section 206 (a) [49 U.S.C. 306 (a)]:

(1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *

* * * * *

Section 207 (a) [49 U.S.C. 307 (a)]:

Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied; * * *

* * * * *

2. 18 U.S.C. 835 provides in pertinent part:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dangerous articles, * * * which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land * * *.
>
> * * * * *
>
> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

3. 1 U.S.C. 1 provides in pertinent part:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise——
>
> * * * * *
>
> the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;
>
> * * * * *

STATEMENT

On July 5, 1956, an information was filed against the A & P Trucking Company, a partnership, charging

the partnership, in count 1, with an offense under 18 U.S.C. 835, *supra*, by the transportation of dangerous articles in a manner violating regulations of the Interstate Commerce Commission (49 C.F.R. 77.823(a)); in count 2, with a violation of Section 222 (a) of the Motor Carrier Act of 1935, *supra*, in that the company permitted the operator to drive without having been physically examined and certified in conformity with the Commission's safety regulations (49 C.F.R. 191.8); in count 3, with a violation of Section 222 (a) by failing to equip a truck with a fire extinguisher as required by regulation (49 C.F.R. 193.95(a)); and in counts 4-35, with violations of Section 222(a) by engaging in various operations as a common carrier without the certificate of convenience and necessity required by Section 206 (a), *supra* (R. 1-15).

The two-count information against Hopla Trucking Company, a partnership, filed July 6, 1956, charged the partnership with offenses under 18 U.S.C. 835, in that it transported flammable liquid by motor vehicle in a manner violating Interstate Commerce Commission regulations (49 C.F.R. 77.823 (a) and 77.817; R. 23-24).

The District Court dismissed each of the informations on the ground that the partnership, as such, was not subject to criminal liability (R. 19, 27).

SUMMARY OF ARGUMENT

The District Court dismissed the indictments against both appellees on the ground that a partnership might not be sued as such. In doing so, the court drew no distinction between the offenses charged under Section 222(a) of the Interstate Commerce Act (*supra*, p. 2) and those charged under 18 U. S. C. 835 (*supra*, p. 4). And it failed to indicate whether its action was predicated upon (1) a view that the statutory lan-

guage was inadequate to embrace partnerships, or (2) a view that Congress lacked the requisite power or purpose to impose liability upon a partnership entity? We urge that the statutory language does cover partnerships, and that Congress had the power and the purpose to achieve this result.

I

A. Section 222(a) is the comprehensive misdemeanor section found in Part II (motor carriers) of the Interstate Commerce Act. It deals with infractions of "any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, etc.," and provides for punishment, by means of a fine, of "any person" who knowingly and wilfully violates. It is not necessary to rely upon the anomaly which would result if the section could be invoked against motor carriers doing business in corporate form (as is well settled), but not against those organized (as many are) in partnership form. The fact is that Part II contains its own definition of the term "person": "'person' means any individual, firm, copartnership, corporation, company, association, or joint-stock association" (Section 203 (a), *supra*, pp. 2-3). A plainer and more explicit definition could hardly be asked.

B. 18 U. S. C. 835 is a long-standing provision of the criminal code, which commands that "whoever knowingly violates" I.C.C. regulations governing the safe transportation of explosives shall be subject to fine or imprisonment. The statute provides in terms that the regulations "shall be binding upon *all* common carriers engaged in interstate or foreign commerce" (emphasis

added). They would hardly be binding upon all carriers if not enforceable against all.

Moreover, 18 U. S. C. 835 must be read in conjunction with 1 U. S. C. 1, which states that the term "whoever," when used in an act of Congress, shall include, "unless the context indicates otherwise, * * * corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." Far from indicating otherwise, the context of 18 U. S. C. 835 manifests a design to cover *all* carriers.

The fact that 18 U. S. C. 835 provides for fine or imprisonment presents no obstacle. Although the alternative of imprisonment obviously cannot be applied in a prosecution against a business entity (whether it be a corporation, a joint stock association, or a partnership), the provision for a fine is available. See *United States* v. *Union Supply Company,* 215 U. S. 50, holding that a corporation might be fined for knowing violation of a statutory requirement (record-keeping provisions of the Oleomargarine Act) although the prescribed penalty was a fine *and* imprisonment. As this Court long ago held in a prosecution brought under the Interstate Commerce Act against a rail carrier doing business as an association, there is no reason why Congress cannot "charge the partnership assets with a liability and * * * personify the company so far as to collect a fine by a proceeding against it by the company name," *United States* v. *Adams Express Company,* 229 U. S. 381, 390.

II

A. It is, to be sure, the common law rule that a partnership has no status apart from its individual mem-

bers. But it is equally clear, as the *Adams Express* case and many other decisions, both federal and state, attest, that the legislature may, for particular purposes, treat a partnership as an entity. Numerous regulatory statutes, including those here involved, place partnerships in the class of persons subject to the statutory requirements and sanctions, and innumerable prosecutions have been brought against partnerships without question being raised as to their amenability to penalty.

The essence of regulatory measures of this kind is to deter commercial or business conduct which departs from an established norm deemed necessary for the protection of the public. When a partnership engages in a business affected with the public interest—in this case, a licensed business—there is certainly no sound reason why it should not be answerable to the prescribed standards in precisely the same way as a corporation engaged in that same business.

B. Under the regulatory statutes here involved, *scienter* is an element of the offense. There is no reason, however, why the "knowledge" of the partnership may not be established in the same way as the "knowledge" of a corporation in similar circumstances—by proving the knowledge of the company's authorized agents or employees.

We do not deal here with classic common law crimes which rest upon deeply ingrained concepts of personal blameworthiness and moral wrong, crimes which depend for their commission upon a "concurrence of an evil-meaning mind with an evil-doing hand," *Morissette* v. *United States,* 324 U. S. 246, 251. These are not statutes which seek to cure or change the mental processes of a criminal, but laws which seek to deter business enterprises from operating loosely or care-

lessly in the conduct of a business affecting the public. They aim, as do the implementing regulations, at enforcement of carrier responsibilities. The use of the words "wilfully" and "knowingly" reflects only a purpose to excuse the unknowing or unavoidable violation. Those words do not import that a penalty may be imposed only if the defendant is shown to have had an evil or corrupt motive.

Equality of treatment amongst all common carriers is essential to proper control of interstate carriage. The public and the motor carrier industry require protection from unsafe and unlicensed practices irrespective of whether the derelictions are those of corporations, partnerships, associations, or sole proprietorships. It is no answer that the Government could seek to prosecute the responsible individual employee or agent. It may well be difficult or impossible, particularly in the case of a large carrier organization, to isolate the responsible individuals, even though it be clear that there has been a general and wanton disregard of regulatory requirements. The important consideration, moreover, is that sound enforcement depends primarily upon the capacity to induce the company to take prophylactic measures. Training and supervision, which must be provided from above, are unquestionably the key to compliance and to safety. As Judge Charles Clark stated of a prosecution under another regulatory statute, the "purpose of the Act is a deterrent one; and to deny the possibility of corporate [company] responsibility for the acts of minor employees is to immunize the offender who really benefits and open wide the door for evasion," *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798, 801 (C. A. 2), certiorari denied, 328 U. S. 869.

Congress, we submit, had the power and the purpose to treat all carriers alike.

ARGUMENT

In dismissing the informations on the ground that a partnership, as an entity, was not amenable to the charges made, the District Court drew no distinction between offenses under Section 222 (a) of Part II of the Interstate Commerce Act (Motor Carrier Act of 1935) and those under 18 U.S.C. 835. Nor did it say whether it was holding (1) that the statutes involved were to be construed as not undertaking to subject a partnership entity to criminal liability, or (2) that Congress was without power to impose such liability. We argue that Congress, in both statutes, has subjected partnerships (as such) to criminal liability. And, in our view, there is nothing to prevent Congress from imposing criminal liability on a business entity—whether it be a corporation, partnership or association—for commercial offenses which arise from the conduct of the business and fall within the regulatory powers of the federal government. In such cases, the company's "knowledge" may be proved by establishing the knowledge of its authorized agents or employees.

I

Congress Has Provided that Partnerships Engaged as Motor Carriers in Interstate Commerce Be Subject to Criminal Liability under Section 222 (a) of the Interstate Commerce Act and under 18 U. S. C. 835.

A. *Section 222 (a):*

On the issue of statutory construction, there is, we think, hardly room for an argument that Section 222 (a)

(*supra*, p. 2) does not ~~not~~ subject partnership entities to criminal liability. The prohibitions of the Section run against "[a]ny person", and the definitions section of Part II of the Interstate Commerce Act (Section 203(a), *supra*, pp. 2-3) specifically defines "person" to mean "any individual, firm, copartnership, corporation, company, association, or joint-stock association; * * *."[1] A violation of this statute, or the regulations promulgated thereunder, constitutes a misdemeanor, and the only penalty which may be imposed is a small fine (not less than $100 for the first offense and a maximum of $500 for any subsequent offense), which obviously can be assessed against the treasury of the business. The decision of the District Court on this aspect of the case can therefore be reasonably interpreted only as a holding that Congress is without power to subject a partnership to criminal liability for knowing violations, even though the sole penalty is a fine. See Point II, *infra*, pp. 17 *et seq.*

---

[1] Many other federal regulatory statutes similarly define the word "person" to cover, *inter alia*, partnerships. See, for example, Civil Aeronautics Act, 52 Stat. 973, 979, 49 U.S.C. 401 (27); Communications Act of 1934, 48 Stat. 1064, 1066, 47 U.S.C. 153(h), (i); Shipping Act, 39 Stat. 728, as amended, 46 U.S.C. 801, 812, 814, 815; Tariff Act of 1930, 46 Stat. 590, 708, 19 U.S.C. 1401 (d); Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, *et seq.*, 21 U.S.C. 301, *et seq.*; United States Grain Standards Act, 39 Stat. 482, 7 U.S.C. 71, 72, *et seq.*; Packers & Stockyards Act of 1921, 42 Stat. 159, 7 U.S.C. 181, 182 (l); Perishable Agricultural Commodities Act, 48 Stat. 123, 124, 7 U.S.C. 581, 589 (l); Agricultural Marketing Agreement Act, 48 Stat. 31, as amended, 7 U.S.C. 601, 608 a (4), (9); Animal Quarantine Laws, 32 Stat. 791-792, 21 U.S.C. 111, 122; Federal Seed Act, 53 Stat. 1275, 7 U.S.C. 1561 (2); Meat Inspection Act, 34 Stat. 1260, 21 U.S.C. 71, 88; Connally "Hot Oil" Act, 49 Stat. 30, 15 U.S.C. 715 (a) (4), 715 (e); Wool Products Labeling Act, 54 Stat. 1128, 15 U.S.C. 68, 68h; Fur Products Labeling Act, 65 Stat. 175, 15 U.S.C. 69, 69i(a).

B. *18 U.S.C. 835:*

This statute (*supra*, p. 4), which has predecessors dating back to 1866 (14 Stat. 81), was before the Court in *United States* v. *American Freightways Co.*, 352 U.S. 1020, in which an equally divided Court affirmed a district court's order similarly dismissing an information returned against a partnership. We argued in that case, and we again urge here, that the language of 18 U.S.C. 835, read in conjunction with 1 U.S.C. 1 (*supra*, p. 4), is sufficiently broad to subject a partnership to criminal liability.

18 U.S.C. 835 directs that "[w]hoever knowingly violates" the regulations promulgated thereunder shall be subject to criminal liability. 1 U.S.C. 1 specifically commands that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise * * * the words 'person' and 'whoever' include * * * partnerships * * *." It was in the same codification which made Title 18 positive law (62 Stat. 683) that Congress amended 1 U.S.C. 1 by adding the word "whoever" and broadly defining "person" and "whoever" to include "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" (62 Stat. 859). Thus, there is no question that Congress proposed to deal with the criminal liability of every form of business organization—partnerships no less than corporations.[2]

In *United States* v. *United Mine Workers of America*, 330 U. S. 258, 275, this Court was called upon

---

[2] Cf. the Agricultural Marketing Agreement Act, 7 U.S.C. 601, *et seq.*, which defines "person" to include "an individual, partnership, corporation, association and *any other business unit*" (7 U.S.C. 608 (a) (9) (emphasis added)). *Scienter* is an element of offenses under that Act. See 7 U.S.C. 608 a (4), 620.

to construe Section 13 of the Norris-LaGuardia Act, 47 Stat. 73, which did not define "person." In considering whether the Act would apply to the sovereign, the Court looked to 1 U. S. C. 1 to determine the meaning of the term "person," and noted that, by force of that provision, the term did cover partnerships and corporations. See, also, *United States* v. *Union Supply Company*, 215 U. S. 50, 54-55 (construing "person" and "wholesale dealers" as used in the Oleomargarine Act of 1902, 32 Stat. 193, to include a corporation, when read in light of 1 U. S. C. 1); *Falk* v. *Curtis Pub. Co.*, 98 Fed. 989, 990 (C.C. E.D. Pa.) (so construing "person" in R. S. 4965 (copyright infringement)); *United States* v. *New York Herald Co.*, 159 Fed. 296, 297 (C.C. S.D. N.Y.) (so construing "person" in R. S. 3893 (obscene matter)); *Alamo Fence Company of Houston* v. *United States*, 240 F. 2d 179, 181 (C. A. 5) (applying 1 U. S. C. 1 and holding "whoever" in 18 U. S. C. 1010, and "persons" in 18 U. S. C. 371, to include corporations).

Moreover, 18 U. S. C. 835 has, itself, been applied to corporations without any question being raised as to its applicability. See, *e. g.*, *United States* v. *Boyce Motor Lines*, 342 U. S. 337; *West Coast Fast Freight* v. *United States*, 205 F. 2d 249 (C. A. 9); *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393 (C. A. 1). If the prohibitions against unsafe transportation of explosives and the accompanying penalties are not deemed restricted to natural persons—if, in other words, they do apply to corporate entities—there is no logic in holding them inapplicable to other types of business entities, such as partnerships and joint stock associations.

There is nothing in the context of 18 U. S. C. 835 to bring it within the exception of 1 U. S. C. 1.[3] On the contrary, the language of 18 U. S. C. 835 so clearly suggests a Congressional purpose to achieve full coverage that, even without the explicit command of 1 U. S. C. 1, the normal reading of the statute would warrant its interpretation as subjecting partnerships to criminal liability. Thus, the statute makes regulations promulgated under the Act "binding upon *all* common carriers" (emphasis added). The penalties for breach of duty (which fall upon "[w]hoever knowingly violates") cannot fairly be deemed any less extensive in their coverage.

There is no practical difficulty in personifying the partnership for the purpose of imposing criminal liability under 18 U. S. C. 835. The proscribed offense is a misdemeanor and, since the penalty is either a fine or imprisonment, punishment may be validly imposed on the firm by means of a fine on its assets.[4] In *United States* v. *Union Supply Company*, 215 U. S. 50, a corporation was indicted under the Oleomargarine Act of 1902 for "wilfully" violating the Act in failing to keep required records, an offense carrying the prescribed punishment of a fine *plus* imprisonment. In holding for a unanimous Court that a corporation was subject

---

[3] "* * * *unless the context indicates otherwise* * * * the words 'person' and 'whoever' include", etc. (emphasis added).

[4] The punishment under former provisions was a $2,000 fine or 18 months' imprisonment, or both (18 U.S.C. (1940 ed.) 383, 385). The present law provides a maximum fine of $1,000 or one year imprisonment, or both, for a violation of the regulations not resulting in death or bodily injury. As the reviser notes: "The former provision * * * with the * * * requirement for prosecution by indictment and the stigma of commission of a felony upon conviction, appeared out of all proportion to the gravity of the offense."

to the provisions of the Act and amenable to punishment by imposition of a fine, Mr. Justice Holmes observed (215 U. S. at 55):

> * * * if we free our minds from the notion that criminal statutes must be construed by some artificial and conventional rule, the natural inference, when a statute prescribes two independent penalties, is that it means to inflict them so far as it can, and that if one of them is impossible, it does not mean on that account to let the defendant escape.

To hold that the carriers in the instant case are subject to liability for their breaches of the statutory requirements would hardly produce a novel result. As already noted (p. 11, note 1, *supra*), numerous regulatory statutes explicitly personify the partnership and impose criminal liability on the business entity. See, also, discussion, *infra*, pp. 23-26.

The result, moreover, is one long since sanctioned by this Court. *United States* v. *Adams Express Co.*, 229 U. S. 381. In *Adams Express*, the defendant, a joint stock association, was indicted for departing from its filed schedule of rates, in violation of the Interstate Commerce Act. Section 10 of that Act (the counterpart of Section 222(a) of the Motor Carrier Act) made any common carrier "willfully" violating the Act guilty of a misdemeanor (36 Stat. 539, 549). The precise issue was whether a provision making "common carriers" (defined to include "express companies") guilty of a misdemeanor for violations of the Act could be applied to a company organized as a joint stock association. In a unanimous opinion upholding the indictment, the

Court, speaking through Mr. Justice Holmes, held that the term "common carriers" was to be given its "natural" meaning and coverage, and not to be restricted to carriers organized in corporate form (pp. 389-390). The opinion states (p. 389):

> * * * no one, certainly not the defendant, seems to have doubted that the statute now imposes upon them the duty to file schedules of rates. *American Express Co.* v. *United States,* 212 U. S. 522, 531. (The American Express Company is a joint stock association.) But if it imposes upon them the duties under the words common carrier as interpreted, it is reasonable to suppose that the same words are intended to impose upon them the penalty inflicted on common carriers in case those duties are not performed.

As to a possible Constitutional prohibition, Mr. Justice Holmes further stated (p. 390):

> The power of Congress hardly is denied. The constitutionality of the statute as against corporations is established, *New York Central & Hudson River R. R. Co.* v. *United States,* 212 U. S. 481, 492, and no reason is suggested why Congress has not equal power *to charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name.* That is what we believe that Congress intended to do. [Emphasis added.]

In sum, the regulations promulgated under 18 U. S. C. 835 are in terms binding upon *all* common carriers, and all carriers (whether corporations, joint stock associations or partnerships) must be deemed

subject to the penalties provided in the same statute for violation of these regulations. Congress has exercised its "power to charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name."

II

Congress Had the Power and the Purpose to Subject the Partnership Entity To Criminal Liability

If we are correct in our view that Congress has adopted language sufficiently comprehensive to subject the partnership entity to criminal liability, the question remains whether Congress had the power and the purpose to do so. We believe, as the *Adams Express* case, *supra*, holds, that Congress does have this power, just as it has the power to treat a corporation as an entity for purposes of criminal liability. When a partnership is treated as an entity, its position is much the same as that of a corporation. It is the business enterprise—concretely, the company treasury—which is subjected to liability. In both instances, the "knowledge" of the entity can be proved in the same way—by proving the knowledge of authorized agents or employees. And to hold that there is liability in both instances is to carry out the statutory purposes.

A. *The common law concept of a partnership does not prevent statutory personification of a partnership for the purposes of criminal liability.*

1. There is nothing in the inherent nature of a partnership which precludes a legislature from treating it as an entity and imposing criminal liability against it in that form. To be sure, under usual common law pre-

cepts a partnership is considered an aggregate of individuals acting in concert, having neither status nor personality independent of its individual members. Mechem, *Elements of the Law of Partnership*, § 2, p. 3 (see n. 4); § 6, pp. 8-11 (2d ed., 1920).[5] Under this theory, it may not sue or be sued in the firm name. Mechem, *id.*, § 123, p. 109. On the same basis, it has also been presumed that a partnership is not to be subjected to criminal responsibility in the absence of provision by the legislature. *People* v. *Schomig*, 74 Cal. App. 109; *People* v. *Maljan*, 34 Cal. App. 384. However, it has been consistently recognized that, whatever may be the rule in the absence of statute,[6] it is within the province of the legislature to treat a partnership as an entity discrete from its individual members and to accord it a separate status.

---

[5] The Uniform Partnership Act (7 U.L.A. § 6) defines the relationship as "an association of two or more persons to carry on as co-owners a business for profit." But, even under common law, such devices as representative suits in equity, trust arrangements, waiver and estoppel modify the rigors of the rule. See Dodd, *Dogma and Practice in the Law of Associations*, 42 Harv. L. Rev. 977 (1929). Cf. Note, *The Partnership as a Legal Entity*, 41 Col. L. Rev. 698 (1941), where it is pointed out that the "entity" theory has been relied upon in many situations in New York, a state which follows the common law rule.

[6] There is a strong body of law embracing the civil law concept that a partnership—even absent statutory directive—is a legal entity. See Crane, *The Law of Partnership* (1938), § 3. The entity theory of partnership appears to be followed in Michigan (*Scott* v. *Alsar Company*, 336 Mich. 532, 538; *Employment Security Commission* v. *Crane*, 334 Mich. 411, 416; *Lobato* v. *Paulino*, 304 Mich. 668, 675-676); in Iowa (*Rubio Savings Bank of Brighton* v. *Acme Farm Products Co., et al.*, a partnership, 240 Ia. 547, 556); in Nebraska (*In re Estate of Zents*, 148 Neb. 104, 114; *State* v. *Pielsticker*, 118 Neb. 419, 421-422); to some extent, in Vermont (*Brooks* v. *Ulanet*, 116 Vt. 49); and in Louisiana (*E. B. Hayes Machinery Co.* v. *Eastham*, 147 La. 347).

In federal and state law, a partnership is frequently personified for various purposes. For example, Rule 17(b) of the Federal Rules of Civil Procedure gives a partnership status to sue or be sued in the firm name.[7] Section 18 of the California Labor Code (1955) defines person to include "any person, association, organization, partnership, business trust, or corporation". The Public Health Law of New York (44 McKinney's Consolidated Laws, 1954), dealing, *inter alia*, with Water Pollution Control (§ 1202), Air Pollution Control (§ 1267, 1958 Supp.), and Narcotic Control (§ 3301 (2)), includes partnership within its general definition of persons. In construing the Bankruptcy Act of 1898, 30 Stat. 544, as amended, this Court, in *Liberty Nat. Bank* v. *Bear*, 276 U.S. 215, 220-221, noted "* * * that a partnership may be adjudged a bankrupt as a separate entity without reference to the bankruptcy of the partners as individuals." See, also, *Meek* v. *Centre County Banking Co.*, 268 U.S. 426, 431; *In re Ginsberg*, 219 F. 2d 472, 473 (C.A. 3).[8]

Associations, which possess many of the characteristics of partnerships, have also been treated as entities both for purposes of civil responsibility (*United Mine Workers* v. *Coronado Co.*, 259 U.S. 344, holding a

---

[7] Rule 17 (b) provides in pertinent part:

"* * * In all other cases capacity to sue or be sued shall be determined by the law of the state in which the District Court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States * * *."

[8] The present Bankruptcy Act (Section 5) retains the provision that a partnership may be adjudged a bankrupt separately from its general partners (52 Stat. 840, 845, as amended, 11 U.S.C. 23.)

labor union amenable to civil suit under the antitrust laws) and criminal liability (*United States* v. *Adams Express Co.*, 229 U.S. 381, discussed *supra*, pp. 15-17). And in *Brown* v. *United States*, 276 U.S. 134, where the issue was whether a subpoena could validly be directed to an association in the course of a grand jury investigation of possible violations of the Sherman Act, this Court pointed out that Congress may authorize proceedings against an association (pp. 141-142):

> The general rule is that in the absence of statute an unincorporated association is not a legal entity which may be sued in the name of the association. Many of the states have adopted statutes expressly providing that such associations may be sued. But an express provision is not indispensable. Such a suit may be maintained in virtue of a necessary implication arising from statutory provisions although the statute does not in terms so provide. Here, such an implication arises from the provisions of the Sherman Anti-Trust Act, c. 647, 26 Stat. 209. The act denounces as illegal every contract, combination and conspiracy in restraint of interstate and foreign trade, and provides that every person who shall make any such contract or engage in any such combination or conspiracy shall be guilty of a misdemeanor. Section 8 of the act provides that the word person shall be deemed to include corporations and *associations* existing under or authorized by the laws of the United States, of any territory, state or foreign country. That the Alliance was an association within the meaning of this section and, therefore, subject to the provisions of the act is clear. The provisions

of the act creating criminal and civil liability against such an association necessarily carry the implication that it may be proceeded against by its common name to enforce the liability. Consequently, for a violation of the Anti-Trust Act, it may be prosecuted, indicted and convicted, and judgment rendered against it and satisfied by execution out of its assets. *United Mine Workers* v. *Coronado Co.*, 259 U.S. 344, 385-391, 392; *Dowd* v. *United Mine Workers of America*, 235 Fed. 1, 5-6.

2. By the same token, where Congress wills it, criminal liability may be imposed against the partnership entity and a fine collected from the partnership assets.[9] Thus, in *Evans Bros. Packing Co. et al.* v.

---

[9] The American Law Institute has recommended the following legislation (Model Penal Code, Tent. Draft No. 5 (1956), § 2.07):

* * * * *

"(3) An unincorporated association may be convicted of the commission of an offense if and only if

"(a) the offense is defined by a statute other than the Code which expressly provides for the liability of such an association, and the conduct is performed by an agent of the association acting within the scope of his office or employment in behalf of the association, except that if the law defining the offense designates the agents for whose conduct the association is accountable or the conditions under which it is accountable, such limitations shall apply; or

"(b) the offense consists of an omission to perform an act which the association is required by law to perform; or

"(c) the offense is defined by Articles [or Sections] of the Code [or by specified statutes other than the Code] and the commission of the offense was authorized, requested, commanded, or performed by the executive board of the association, or by an agent having responsibility for the formation of association policy or by a high managerial agent having supervisory responsibility over the subject matter of the offense and acting within the scope of his office or employment in behalf of the association."

* * * * *

See Comments, Model Penal Code, Tent. Draft No. 4 (1955), pp. 152-154.

United States, 203 F. 2d 504 (C.A. 9), informations had been returned against the company, a partnership, and against each of three named partners, charging a series of violations of the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601, *et seq.* The district judge had imposed fines, under each count, upon the partnership, and separate fines, also under each count, upon the named individual partners. This was challenged on appeal as involving an unlawful duplication of penalties. The Court of Appeals rejected this contention, stating (p. 509):

> A key provision of the Act is found in § 608c(1) as follows: "The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in sections 601-608, 608a, 608b, 608c, 608d-612, 613, 614-619, 620, 623, and 624 of this title as "handlers." In § 608a(9) the term "person" so used is defined to include "an individual, partnership, corporation, association, and any other business unit." We think that a fair construction of the Act would make the partnership as a business unit a "handler."[10]

---

[10] Compare *Adams Express Co.* v. *Commonwealth*, 27 Ky. L. Rep. 1096, where a partnership was convicted under a Kentucky penal statute for "willfully and knowingly" shipping and selling spirituous liquor, and a fine assessed against it. Reversal in this Court was solely on the ground that the Kentucky statute improperly interfered with interstate commerce. *Adams Express Co.* v. *Kentucky*, 206 U.S. 129.

Although there are few other reported cases which discuss the point, it has been common practice to proceed against partnerships, as entities, for violation of federal regulatory laws which provide that a partnership shall be treated as a person.[11] Until the *American Freightways* case (352 U.S. 1020), the district courts had assumed that the power exists—an assumption by no means surprising in light of this Court's declaration, more than 40 years ago, that the power of Congress "to personify [a] company" and "to charge the partnership assets with a liability" was undoubted. *United States* v. *Adams Express Co., supra,* 229 U.S. at 390.

There are no statistics available as to the number of criminal cases brought by the United States against partnerships. Such data is obtainable only by checking cases on a file-by-file basis. We have examined the Government files in cases brought under a number of regulatory acts during specified periods of time. While our search represents no more than a sampling, it suffices, we believe, to indicate the extent of the practice and of its acceptance by the district courts.

Under the Motor Carrier Act of 1935, it has been common practice to bring suit against partnerships (as well as against individual partners) almost since the inception of the motor-carrier enforcement program.[12]

---

[11] The Department of Agriculture has informed us that the practice of bringing criminal proceedings against partnerships for violation of the Agricultural Marketing Agreement Act goes back ten years or more. An example of an early and successful prosecution of a partnership under that Act is *United States* v. *Maggio Co.*, S.D. Cal., Cr. 8653, 1946.

[12] The earliest case we have noted is *United States* v. *Moland Bros. Trucking Co. & H. T. Moland,* D. Minn., Cr. 589, 1939, in which the government proceeded successfully against the partnership defendant and against an individual partner.

In a period covering 1956, 1957 and part of 1958, there were thirty-five successful prosecutions under this statute against partnership entities; in all of these, fines were assessed.[13] In the same period, the total number of prosecutions under this statute against all types of motor carriers (corporation, individual and partnership) numbered approximately 482.

Apart from the *American Freightways* case, *supra,* we have found only one recent prosecution brought against a partnership under 18 U.S.C. 835. The defendant partnership pleaded guilty and was fined $750. *United States* v. *Cray Oil Company,* D. N. H., Cr. 6422, October 15, 1957.

Successful prosecutions of partnerships, during specified periods of time, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.* (24 out of a total of 277 successful prosecutions against all types of violators),[14] the Meat Inspection Act, 21 U.S.C. 71, *et seq.* (13 successful prosecutions),[15] the Federal Seed Act, 7 U.S.C. 1551, *et seq.* (13 successful prosecutions),[16] the Animal Quarantine laws, 21 U.S.C.

---

[13] The list of cases is set forth as Appendix A, *infra,* pp. 38-40.

[14] The Act defines "person" to include "individual, partnership, corporation, and association" (21 U.S.C. 321 (e)). It is not necessary to show *scienter* to establish a violation (Section 333(a)), but if the offense is committed with "intent to defraud or mislead", the penalty is increased to a maximum fine of $10,000, or a maximum prison sentence of 3 years (333(b)).

[15] The sections of the Act dealing with offenses and penalties refer to "any person, firm, or corporation, or any officer or agent of any such person, firm, or corporation" (21 U.S.C. 88). *Scienter* is not an element of the offenses.

[16] The Act defines "person" to include a "partnership, corporation, company, society, or association" (7 U.S.C. 1561(2)). *Scienter* is not an element of the offense (Section 1596), but the violations of employees are deemed also to be the violations of the business (Section 1597).

111, *et seq.* (3 successful prosecutions),[17] the Connally "Hot Oil" Act, 15 U.S.C. 715, *et seq.*[18] and 18 U.S.C. 1001 (false statements) are set out in Appendix B, *infra*, pp. 40-56.

3. There is good reason why partnerships have been personified and held criminally liable under federal regulatory statutes of the type referred to above. The aim of these laws is to control, in the public interest, the operations of the business organization, whether organized as corporation, joint stock association or partnership, and to impose criminal sanctions upon the business for departure from fixed standards of operation. Thus, the thrust of the Motor Carrier Act of 1935 and 18 U.S.C. 835 is to supervise, in the public interest and for the welfare of the motor trucking industry, the operations of all common carriers.

In deciding whether it should issue a franchise to a motor carrier—a valuable privilege—the Interstate Commerce Commission considers only the fitness and willingness of the applicant to perform the services proposed and whether such service will be in the interest of the public convenience and necessity (Sec. 207(a)). It does not consider the form in which the carrier operates, and it cannot refuse to grant a certificate solely because of the organizational makeup of the carrier. It should be noted that appellee Hopla Trucking Company applied for and was certified to operate as a partnership entity, and that the main burden of the charges lodged against appellee A & P Trucking

---

[17] The prohibitions apply to "any person, company, or corporation" (21 U.S.C. 115, 117, 122). *Scienter* is an element of the offense.

[18] The Act requires proof that the violation was "knowingly" committed and defines "person" to include "an individual, partnership, corporation or joint-stock company" (15 U.S.C. 715(a)(4)).

Company was its failure to obtain such operating authority—a privilege which could not have been denied it because it was a partnership.

Applying the rationale of this Court in *United States* v. *Adams Express Co.*, 229 U.S. 381, 389, it seems manifest that where a partnership cannot be denied the valuable privilege of certification to carry on interstate trucking operations because it is a partnership, and where, in fact, a substantial number of carriers have been certified in that form, the partnership enterprise should not be allowed to escape its responsibility to meet the standards which attach to carrier status.

B. *There is no objection to establishing* scienter *by proving the knowledge of company agents or employees since the offenses charged arise from operation of the business and do not involve moral turpitude.*

1. An element of intent is contained in the offenses created under 18 U.S.C. 835 (*Boyce Motor Lines* v. *United States*, 342 U.S. 337; *United States* v. *Chicago Express Inc.*, 235 F. 2d 785 (C.A. 7)), and similarly a violation of Section 222(a) of the Motor Carrier Act of 1935 must be "knowingly and willfully" done. It does not follow, however, that business entities cannot be prosecuted for derelictions.

The requirement of proof of intent must be considered in the light of the statutory prohibitions. We are not dealing with classic common law crimes, such as larceny, which rest upon deeply ingrained concepts of personal blameworthiness and moral wrong—crimes which, in Justice Jackson's words (*Morissette* v. *United States*, 342 U. S. 246, 251), depend for their commission upon a "concurrence of an evil-meaning mind with an evil-doing hand." Rather, we are dealing with regu-

latory statutes which undertake to control a business affected with a public interest—statutes which establish certain standards for motor carriers and impose penalties upon those carriers which fail to meet or observe them.

"Aid in arriving at the meaning of the word 'willfully' may be afforded by the context in which it is used * * *." *United States* v. *Murdock*, 290 U. S. 389, 395; see *Hartzel* v. *United States*, 322 U. S. 680, 686; *Spies* v. *United States*, 317 U. S. 492, 497. In *United States* v. *Illinois Central Railroad Co.*, 303 U. S. 239, this Court had before it a charge against a corporation for "knowingly and willfully" failing to feed cattle in transit, in violation of an act to prevent cruelty to animals, 34 Stat. 607 (Section 2). The courts below had held that, although there was negligence of a yardmaster, there was no showing of wilful and knowing violation. This Court reversed, holding that, under the statute in question, an indifference to an affirmative legal duty might be considered "willful" (303 U.S. at 242-243):

> In statutes denouncing offenses involving turpitude, "willfully" is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without any such implication. Our opinion in *United States* v. *Murdock*, 290 U.S. 389, 394, shows that it often denotes that which is "intentional, or knowing, or voluntary, as distinguished from accidental" and that it is employed to characterize "conduct marked by careless disregard whether or not one has the right so to act."

The Court approved the view (p. 243) that the statute "is designed to describe the attitude of a carrier, who,

having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." See, also, *Boston & M. R. R.* v. *United States*, 117 F. 2d 428, 431 (C. A. 1).

The same principles have been applied to violations arising under other regulatory statutes, *e. g.*, to a wine dealer's "plain indifference" to the requirement of obtaining stamps, imposed by the Federal Alcohol Administration Act, 49 Stat. 977, *Rex Wine Corporation* v. *Dunigan*, 224 F. 2d 93, 95 (C.A. 2); to a violation of an executive order issued under Title III of the Second War Powers Act, 61 Stat. 945, *Trenton Chemical Co.* v. *United States*, 201 F. 2d 776, 779-780 (C.A. 6), certiorari denied, 345 U.S. 994; to a violation of the Fair Labor Standards Act of 1938, 52 Stat. 1060, *Nabob Oil Co.* v. *United States*, 190 F. 2d 478, 480 (C. A. 10), certiorari denied, 342 U. S. 876; and to a violation of the Elkins Act, 34 Stat. 587, *Boone* v. *United States*, 109 F. 2d 560 (C. A. 6). In the *Boone* case, the court stated (p. 563): "The penalty is not imposed for unwitting failure to comply with the statute, but for intentionally, carelesly, knowingly or voluntarily disregarding the provisions of the Act and its violation requires neither evil purpose nor criminal intent"; cf. *Armour Packing Co.* v. *United States*, 209 U.S. 56, 85-86.[19]

---

[19] And see *United States* v. *Heilig*, 137 F. Supp. 462, 466 (D. Md.) (Fair Labor Standards Act); *Zimberg* v. *United States*, 142 F. 2d 132, 137-138 (C.A. 1), certiorari denied, 323 U.S. 712 (Emergency Price Control Act of 1942, 56 Stat. 23, 28); *Kempe* v. *United States*, 151 F. 2d 680, 688 (C.A. 8) (Emergency Price Control Act); *Hertz Drivurself Stations, Inc.* v. *United States*, 150 F.2d 923, 929 (C.A. 8) (Fair Labor Standards Act); *United States* v. *Capitol Meats, Inc.*, 166 F. 2d 537 (C.A. 2), certiorari denied, 334 U.S. 812 (Emergency Price Control Act); *Binkley Mining Co. of Missouri* v. *Wheeler*, 133 F. 2d 863, 870-871 (C.A. 8), certiorari denied, 319 U.S. 764 (Bituminous Coal Act of 1937, 50 Stat. 72, as amended).

The meaning of "willfullness" has also been considered in cases arising under Section 222(a) of the Interstate Commerce Act. In *United States* v. *E. Brooke Matlack, Inc.*, 149 F. Supp. 814 (D. Md.), a corporation was charged with wilfully violating regulations requiring that the drivers of vehicles keep daily logs (49 C.F.R., 1958 Cum. Supp., 195.8 (a)). In rejecting the claim that "willfully" means an evil or corrupt motive, the court declared (p. 819):

> The defense is only that the defendant was not acting wilfully and knowingly in failing to require proper logs from the drivers. In deciding this question there are certain well established principles that must be borne in mind. In the first place there can be no doubt that the defendant motor carrier well knew what the regulations required with respect to the logs and knew the importance thereof in relation to safety requirement. * * * The meaning and effect of the word "wilful" depends upon the context in which it is used in a criminal or penal statute. * * *
>
> * * * * *
>
> In the context of the criminal statute involved in this case the word does not connote the existence of an evil motive as it does in some situations involving moral turpitude, as, for instance, in an attempt to wilfully evade the payment of income taxes and thus to cheat the government. See *Spies* v. *United States*, 317 U.S. 492, 63 S. Ct. 364, *supra*. The statute in the present case does not create a crime of moral turpitude, such as were the well known felonies at common law, but enacts a new

statutory requirement to be observed by interstate motor carriers in the interest of public safety.

To similar effect, see *United States* v. *Reid*, 110 F. Supp. 253, 257 (D. Md.); *United States* v. *Gunn*, 97 F. Supp. 476, 480 (W.D. Ark.). Cf. *Inland Freight Lines* v. *United States*, 191 F. 2d 313, 316 (C.A. 10).[20]

The rationale of the *Matlack* case should be applied here. The purposes of the Motor Carrier Act of 1935 are to promote safe and adequate transportation service, to foster sound economic conditions in transportation, and to eliminate unfair or destructive practices.[21] To carry out these objectives, the Commission has adopted regulations relating, *inter alia*, to driver qualifications, health, driving rules, and safety equipment (see 49 C.F.R., parts 190-197). The carrier, its agents,

---

[20] Cf. *Dearing* v. *United States*, 167 F. 2d 310 (C.A. 10), involving the prosecution of an employee (train conductor) for failure to make a true account of his cash fares in violation of Section 20(5) of the Interstate Commerce Act, 24 Stat. 379, as amended. In that context, with overtones of embezzlement, the court held that wilfulness means more than merely engaging in the proscribed conduct.

[21] This policy is enunciated in the Act (Section 202(a), 49 Stat. 543):

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

representatives and employees, are enjoined by the Commission to be conversant with and to implement such requirements. See 49 C.F.R., 1958 Cum. Supp., 191.1; 192.1; 193.1; 195.1; 195.8; 197.01; 197.1.

Two of the counts against appellee A & P Trucking Company deal with violations of these safety regulations.[22] These violations do not involve a question of turpitude; rather, they involve failure to meet the standard deemed essential for the proper control of interstate traffic.

Appellee A & P was also charged with failure to obtain certificates of convenience and necessity (counts 4-35) as required under the Act (Section 206a). The imposition of penalties upon those who engage in unlicensed operations is obviously designed to implement the regulatory scheme. Again, it is clear that use of the word "wilfully" cannot be taken to import a requirement of proving evil motive on the part of the defendant.

Nor does use of the word "knowingly" in 18 U.S.C. 835 preclude corporate or partnership responsibility. This statute is based upon "the need for protecting the public against the hazards involved in transporting explosives * * *." *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 341. To carry out this purpose, the Commission has adopted detailed regulations (see 49 CFR. 77.800, *et seq.*). Appellee Hopla Trucking Company was charged with violating certain of these regulations by failing to mark properly its vehicle containing methanal, a flammable liquid (count 1), and by failing to

---

[22] Permitting a driver to drive without a physical examination (count 2; 49 C.F.R., 1958 Cum. Supp., 191.8) and failure to equip a truck with a fire extinguisher (count 3; 49 C.F.R., 1958 Cum. Supp., 193.95(a)). (R. 2).

require its driver to have in his possession a memorandum showing the labels prescribed for the outside containers of such liquid (count 2) (R. 23-24). Appellee A & P Trucking Company was charged with failing to mark properly a truck containing an oxidizing material (count 1) (R. 1). These violations occurred despite the fact that the Commission had specifically ordered that carriers make these safety regulations effective.[23]

As Professor Sayre has said of statutory provisions having such a protective purpose, the objective "is not to cure or change the mental processes of the defendant. There is no thought of social treatment or rehabilitation. The law's aim is not reformatory, but almost exclusively deterrent, to prevent future repetitions of similar offenses." Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689, 722 (1930). These are not statutes under which liability cannot be imputed to an entity because of "deep rooted notions" of personal responsibility. Sayre, *id.*, p. 717. They are business crimes for which the business as such is properly held liable.[24]

---

[23] 49 C.F.R. 77.800 provides:

"(a) To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of explosives and other dangerous articles, by common and contract carriers, by motor vehicle engaged in interstate or foreign commerce, the regulations * *.* are prescribed * * * to state the precautions that must be observed by the carrier in handling them while in transit. *It is the duty of each such carrier to make the prescribed regulations effective and to thoroughly instruct employees in relation thereto.*" [Emphasis added.]

[24] We are informed by the I.C.C. that even where a company is owned by a single individual enforcement suits have been instituted in the company name. If an individually owned company is prosecuted *qua* company, it would seem to follow, as in the case of any other suit against an entity, that the limit of the punishment would be a fine upon the business entity.

2. Since the statutes here involved do not import a requirement of proving that the defendant had a corrupt or evil motive, a motor-carrier defendant, sued as a business entity, may be held accountable for the knowing acts of its authorized agents and employees. Certainly, it is familiar doctrine that a corporation may be fined for the criminal acts of its agents, even though the regulatory statute describing the offense is one which makes knowledge an ingredient,[25] and that this liability may attach regardless of whether any of the corporation officials has knowledge or specific intent. As stated by Chief Judge Magruder in *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393, 398 (C.A. 1) (concurring opinion):

> In other words, in applying to a corporation an Act of Congress punishing "whoever knowingly" does something, it is usually held to be enough to charge the corporation with guilt if any agent or servant of the corporation, acting for the corporation in the scope of his employment, has the guilty knowledge, in accordance with the general

---

[25] See, *e.g.*, *New York Central R.R.* v. *United States*, 212 U.S. 481; *United States* v. *Union Supply Co.*, 215 U.S. 50; *Joplin Mercantile Co.* v. *United States*, 213 Fed. 926, 935-936 (C.A. 8), affirmed, 236 U.S. 531; *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393, 398 (concurring opinion) (C.A. 1); *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798, 801 (C.A. 2), certiorari denied, 328 U.S. 869; *United States* v. *Steiner Plastics Mfg. Co.*, 231 F. 2d 149, 153 (C.A. 2); *Mininsohn* v. *United States*, 101 F. 2d 477, 478 (C.A. 3); *United States* v. *Armour & Co.*, 168 F. 2d 342, 344 (C.A. 3); *Zito* v. *United States*, 64 F. 2d 772, 775 (C.A. 7); *United States* v. *P. F. Collier & Son Corp.*, 208 F. 2d 936, 941 (concurring opinion) (C.A. 7); *Egan* v. *United States*, 137 F. 2d 369, 379 (C.A. 8), certiorari denied, 320 U.S. 788; *C.I.T. Corp.* v. *United States*, 150 F. 2d 85, 89-90 (C.A. 9); Edgerton, *Corporate Criminal Responsibility*, 36 Yale L. J. 827, 832, *et seq.* (1927).

principles of the law of agency as applied in determining civil liability. See Am. L. Inst., Restatement of Agency, § 272 *et seq.* On this view, it would not be enough to absolve the corporation from liability for a criminal offense of the sort here in question, that no member of the board of directors, or no one of the higher executives, knew that a dangerous commodity was being transported by the company truck in a forbidden quantity without the markings required by the regulation.[26]

In *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798 (C.A. 2), certiorari denied, 328 U.S. 869, an information charged the defendant corporation with knowing violation of federal price regulations. Considering the contention that the guilt of a company salesman could not be attributed to the corporation, the court, speaking through Judge Clark, rejected the notion (p. 801) that distinctions are to be "made in these cases between officers and agents, or between persons holding positions involving varying degrees of responsibility * * *. The purpose of the Act is a deterrent one; and to deny the possibility of corporate responsibilty for the acts of minor employees is to immunize the offender who really benefits, and open wide the door for evasion."

In *Gordon* v. *United States*, 347 U.S. 909, this Court held that individual partners not shown to have knowledge of the criminal acts of agents could not be convicted for "willful" violation of the Defense Pro-

[26] In *St. Johnsbury*, the judgment of the District Court was vacated and the case remanded for a new trial because "the trial court erroneously interpreted 18 U.S.C. 835 as requiring no element of culpable or blamable intent * * *" (220 F. 2d at 397).

duction Act of 1950, 64 Stat. 798, 814, where it was sought to impose vicarious liability, with possibility of imprisonment, upon the individuals for the knowing acts of agents.[27] There is, however, a vital difference between holding that individual partners cannot be personally punished where they are free of personal involvement in the criminal offense (as in *Gordon*)[28] and holding that a fine may not be imposed on the business entity for the knowing acts of its agents. Where the partnership as an entity is the defendant, sanctions can be executed only against the funds of the company. No individual partner can go to jail or suffer other penalty. Cf. *United States* v. *Union Supply Co.*, 215 U.S. 50.

---

[27] Under familiar rules of criminal law, acts not authorized, counseled, advised or approved, cannot be imputed to a guiltless partner where committed by a co-partner or employee. See, *e.g.*, *Lurding* v. *United States*, 179 F. 2d 419, 421 (C.A. 6); *Sleight* v. *United States*, 82 F. 2d 459, 461 (C.A. D.C.); *Levin* v. *United States*, 5 F. 2d 598, 603 (C.A. 9), certiorari denied, 269 U.S. 562; *United States* v. *Cohn*, 128 Fed. 615, 623-624 (S.D. N.Y.), certiorari denied *sub nom. Browne* v. *United States*, 200 U.S. 618. Of course, individuals may be subject to criminal responsibility for acts of their agents for violations of "public welfare offenses" which do not make wilfullness or any degree of intent an element of the offense. *United States* v. *Dotterweich*, 320 U.S. 277; *United States* v. *Behrman*, 258 U.S. 280; Sayre, *Public Welfare Offenses*, 33 Col. L. Rev. 55 (1933); Sayre, *Criminal Responsibility for the Acts of Another*, 43 Harv. L. Rev. 689 (1930); cf. *Morissette* v. *United States*, 342 U.S. 246, 255-260. Cases imposing criminal liability upon the principal for the acts of agents, primarily dealing with liquor sales, false weights and adulterated milk, are set out in 43 L.R.A. (N.S.) 1, 21 *et seq.*; see, also, Model Penal Code, Tent. Draft No. 4, pp. 141-146 (April 25, 1955).

[28] As Professor Sayre has pointed out, "if the offense be punishable by imprisonment, the individual interest of the defendant weighs too heavily to allow conviction without proof of a guilty mind." Sayre, *Public Welfare Offenses*, 33 Col. L. Rev. 55, 72 (1933).

Equality of treatment amongst all "common carriers" is essential to proper control of interstate carriage. The public and the motor carrier industry need protection from unsafe and unlicensed practices irrespective of whether the violations result from the acts of corporations, partnerships, or sole proprietorships. It is no answer to say that sanctions can be enforced against the individual employee or agent who commits the transgression. Sound enforcement depends upon penalizing the business, which stands to benefit from laxity and the taking of "shortcuts." The observance of safe and sound practices within a carrier organization depends primarily upon the vigor and the regularity of supervision and training from above. Especially is this true in a large carrier organization where overlapping functions and duties make it extremely difficult to pinpoint each employee or agent whose knowing actions or omissions contributed to the offense.

The regulations inform the carrier of its responsibility to instruct, train, and supervise its employees. With good reason, the carrier is held responsible for making effective the regulations relating to the safe carriage of explosives (49 C.F.R. 77.800, *supra*, p. 32, n. 23). Similarly, it is the carriers responsibility to implement the safety regulations under the Motor Carrier Act of 1935, dealing with driver qualification, safety rules, safety equipment, etc. (see *e. g.*, 49 C.F.R., 1958 Cum. Supp., 191.1, 192.1, 193.1, 195.1, 195.8, 196.1, 197.01; 197.1).[29] To say that a business entity may

[29] Imposing responsibility upon the carrier itself to direct and train its employees in the requirements of the regulations is usual practice whether the carriage be by motor vehicle, water or rail. See, *e.g.*, 49 C.F.R. 73-1; 74.500; 75.650.

avoid this responsibility by operating in partnership form would be to invite it to shirk its duties to the public. We are not concerned here, it must be emphasized, with an ordinary commercial partnership operating outside the scope of federal control. Rather, we are dealing with companies licensed to operate in a closely regulated business which vitally affects the public. See *American Trucking Associations, Inc.* v. *United States*, 344 U. S. 298; cf. *Tank Truck Rentals* v. *Commissioner*, 356 U. S. 30, 34.

We submit, in sum, that Congress had both the requisite power and purpose:—that, acting within its prerogatives and recognizing the need for uniform enforcement of carrier responsibilities, it has undertaken to treat all carriers alike. A partnership, no less than a corporation, may enjoy the privilege of a franchise. And a partnership, no less than a corporation, is subject to the sanctions that fall upon carriers which fail to meet the regulatory standards.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the orders of the District Court should be reversed and the case remanded for further proceedings under the informations.

J. LEE RANKIN,
Solicitor General.
MALCOLM ANDERSON,
Assistant Attorney General.
RALPH S. SPRITZER,
Assistant to the Solicitor General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

AUGUST 1958.

APPENDIX A

Successful Prosecutions of Partnerships under the Interstate Commerce Act, Part II, 49 Stat. 543, as amended (Motor Carrier Act of 1935), during the Years 1956, 1957 and Part of 1958

United States v. *Sinclair Manufacturing Co.*, N. D. Ohio, Cr. 10450, March 1, 1957 (charged as an aider and abettor under 18 U.S.C. 2);

United States v. *Nixon Brothers Transfer*, E.D. N.Car., Cr. 9829-CC, April 8, 1957;

United States v. *Western Buyers*, N.D. Iowa, Cr. 2368, December 17, 1956;

United States v. *McCue Feed Store*, D. Neb., Cr. 38L, April 12, 1957;

United States v. *B & F Transportation, E. D. Va.*, Cr. 3327, April 29, 1957;

United States v. *Hagan and Stone*, W.D. Ky., Cr. 3500, May 20, 1957;

United States v. *Studer Truck Line*, D. Kan., Cr. 10160, April 12, 1957;

United States v. *L & S Steel Supply Co.*, D. Neb., Cr. 0207, May 9, 1957;

United States v. *Stanley F. Heller & Son*, M.D. Pa., Cr. 12926, May 27, 1957;

United States v. *Mumby Oil Company*, D. Neb., Cr. 42L, May 13, 1957;

United States v. *Mar-Rube Truck Rental*, D. Md., Cr. 23993, September 23, 1957;

United States v. *Joseph H. Smith & Company*, D. Md., Cr. 24006, July 25, 1957;

United States v. *Ochroch Transportation Company*, E.D. Pa., Cr. 19320, October 22, 1957;

United States v. *F. S. Parker & Company*, D. Md., Cr. 24050, November 1, 1957;

United States v. *Southern Asphalt & Petroleum Company*, N.D. Texas, Fort Worth Div., Cr. 9785, September 25, 1957;

United States v. *Mack Transportation Company*, E.D. Pa., Cr. 19376, 24100, February 4, 1958;

United States v. *Mumby Oil Company*, D. Neb., Cr. 0252, November 8, 1957;

United States v. *E. C. Newman Produce Company*, W.D. Va., Cr. 8867, April 14, 1958;

United States v. *Bareford Brothers*, E.D. Va., Cr. 6447, April 8, 1958;

United States v. *Heeren Brothers*, W.D. Mich., Cr. 6280, February 25, 1958;

United States v. *Christian Brothers*, D. Md., Cr. 24301, April 25, 1958;

United States v. *McConnell Heavy Hauling*, E.D. Ark., Cr. 16305, March 26, 1958;

United States v. *David Goldman and Brothers*, E.D. Pa., Cr. 19474, March 19, 1958;

United States v. *Joseph H. Smith Company*, E.D. Pa., Cr. 19271, September 20, 1957;

United States v. *B. K. Barb Trucking Company*, W.D. Va., Cr. 5922, April 14, 1958;

United States v. *Knapp-Sherrill Company*, S.D. Tex., Brownsville Div., Cr. 40702, May 13, 1958 (charged as aider and abettor under 18 U.S.S. 2);

United States v. *Naffziger Bros.*, D. Kan., Cr. 10055, 1956;

United States v. *Stegall Milling Co.*, W.D. N.C., Cr. 872 and 858, 1956;

United States v. *Airline Vans*, N.D. Tex., Dallas Div., Cr. 14041, 1956;

United States v. *Rogers Truck Line*, D. Neb., Cr. 0109, 1956;

United States v. *Tyler Fertilizer Co.*, E.D. Tex., Jeff. Div., Cr. 1989 and 1990, 1956;

United States v. *Temple Dr. Pepper Bottling Co.*, W.D. Tex., Waco Div., 1956;

United States v. *Jackson & Gray Bus Service*, E.D. Pa., Cr. 18563, 1956;

United States v. *Hill Oil Co.*, D. Neb., Cr. C-057, 1956;

United States v. *Thrift Transfer Co.*, E.D. Va., Cr. C-3166, 1956.

APPENDIX B

Examples of Successful Prosecutions of Partnerships under other Regulatory Statutes

1. Information as to prosecutions under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, *et seq.*, is in more readily accessible form than information as to prosecutions under other regulatory statutes, since the Food and Drug Administration publishes periodic printed reports, entitled "Notices of Judgment under the Federal Food, Drug, and Cosmetic Act," which summarize cases which have gone to judgment. The reports published during the period December 1955-December 1957 show that criminal judgments against defendants for violations of the Act were entered in 277 cases, and that in twenty four of these cases (summaries reprinted below, pp. 40-53) a partnership was a defendant in the proceeding:

4811. (F.D.C. No. 35612. S. Nos. 85-983/4 L, 88-580 L.)

INFORMATION FILED: 3-21-55, Dist. S. Dak., against Independent Drug Store, a partnership, Sioux Falls, S. Dak., and William Trimble (manager). Cr. 2882.

CHARGE: Between 5-19-54 and 6-30-54, *Benzedrine Sulfate tablets* were dispensed 3 times without a prescription.

PLEA: Guilty.

DISPOSITION: 10-25-55. Each defendant fined $150.

4820. (F.D.C. No. 37217. S. Nos. 58-667/70 L, 65-781/2 L.)

INFORMATION FILED: 4-7-55, E. Dist. Mich., against Day Drug Co. (a partnership), Detroit, Mich., and Edward A. Klar and Solomon Budney (partners and pharmacists). Cr. 34850.

CHARGE: Between 3-12-54 and 4-1-54, *dextro-amphetamine sulfate tablets, methyltestosterone tablets,* and *methantheline bromide tablets* were each dispensed twice without a prescription.

PLEA: Nolo contendere.

DISPOSITION: 1-23-56. Partnership fined $600 and Klar and Budney fined $600 jointly. Fine against Klar and Budney suspended for 1 year.

4832. (F.D.C. No. 37220. S. Nos. 38-544 L, 72-114 L, 72-121/2 L.)

INFORMATION FILED: 7-14-55, E. Dist. N.Y., against Nassau Chemists (a partnership), Baldwin, N.Y., and Saul Witheiler and Harry Lichtiger (partners), Cr. 44045.

CHARGE: Between 5-11-54 and 6-3-54, *Seconal Sodium capsules* were dispensed twice and *Gantrisin tablets* and *capsules containing a mixture of secobarbital sodium and amobarbital sodium* were each dispensed once upon requests for prescription refilled without authorization by the prescribers.

PLEA: Guilty—by partnership to all charges reported herein, by Witheiler to dispensing *Gantrisin tablets* and *capsules containing a mixture of secobarbital sodium and amobarbital sodium,* and by Lichtiger to dispensing *Seconal Sodium capsules.*

DIPOSITION: 8-11-55. Partnership fined $100 and each individual fined $700.

4837. (F.D.C. No. 37250. S. Nos. 66-968/9 L, 66-971 L.)

INFORMATION FILED: On or about 3-22-55, E. Dist. Pa., against Adams Drug Store, a partnership, Reading, Pa., and Oliver F. Adams (a partner), Cr. 18299.

CHARGE: Between 6-9-53 and 6-18-53, *capsules containing ergot* were dispensed 3 times without a prescription.

PLEA: Guilty.

DISPOSITION: 9-9-55. Partnership fined $150 and individual $300.

4845. (F.D.C. No. 38510. S. Nos. 16-181 M, 16-191/4 M.)

INFORMATION FILED: 11-3-55, Dist. Mont., against Ronan Drug Co. (a partnership), Ronan, Mont., and Norman D. Coster (a partner), Cr. 3706.

CHARGE: Between 1-19-55 and 3-24-55, *pentobarbital sodium capsules, Seconal Sodium capsules,* and *capsules containing a mixture of Seconal Sodium and Amytal Sodium* were each dispensed once without a prescription, and *Seconal Sodium capsules* and *pentobarbital sodium capsules* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty.

DISPOSITION: 11-28-55. Partnership—$250 fine; individual—prison sentence of 3 months suspended and probation for 2 years.

4876. (F.D.C. No. 37873. S. Nos. 60-574 L, 60-577 L, 60-588 L, 60-602 L, 60-654 L, 60-659 L, 60-877/8 L.)

INFORMATION FILED: 9-9-55, W. Dist. S.C., against Economy Drug Co. (a partnership), Anderson, S.C., and Jack H. Wright and John W. Glenn (partners in the partnership), Paul J. High and George W. Evans (pharmacists), and William F. Kirby (an employee).

CHARGE: Between 7-1-54 and 9-15-54, *Nembutal Sodium Capsules* (counts 1, 2, 3, and 4) and *Seconal Sodium capsules* (counts 5, 6, 7, and 8) were each dispensed 4 times upon requests for prescription refills without authorization by the prescriber.

PLEA: Nolo contendere—by partnership to each of 8 counts of information; by William F. Kirby to count 1; by Jack H. Wright to counts 2, 6, and 8; by Paul J. High to counts 3 and 5; by George W. Evans to count 4; and by John W. Glenn to count 7.

DISPOSITION: 10-24-55. Partnership—$1.00 fine; Wright and Glenn—$100 fine each; other individuals—$25 fine each.

4877. (F.D.C. No. 37886. S. Nos. 60-491 L, 60-498 L, 60-562 L, 60-593 L, 60-684 L, 60-779 L, 60-782 L.)

INFORMATION FILED: 7-22-55, S. Dist. Fla., against Silver Palace Pharmacy (a partnership), Fort Pierce, Fla., and George E. Felt, Delmas E. Wallis, and William K. Nye (pharmacists), Cr. 9424.

CHARGE: Between 5-22-54 and 8-30-54, *Seconal Sodium capsules* (counts 1, 2, and 3) and *cortisone acetate tablets* (counts 4, 5, and 7) were each dispensed 3 times and *Terramycin tablets* (count 6) were dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Nolo contendere—by partnership to each count; by Felt to counts 1, 5, and 6; by Wallis to counts 2 and 3; and by Nye to counts 4 and 7.

DISPOSITION: 11-4-55. Partnership—$200 fine on count 1; sentence withheld on remaining counts. Fine of $50 each against Felt on count 1, Wallis on count 2, and Nye on count 4. Imposition of sentence against individuals withheld with respect to remaining counts to which individuals had pleaded.

4962. (F.D.C. No. 38161. S. Nos. 1-682/4 M, 1-686/7 M.)

INFORMATION FILED: 10-25-55, S. Dist. Ga., against Jones Truck Stop (a partnership), 1 mile south of Folkston, Ga., and Troy E. Jones (a partner), and Robert Franklin Phillips and Betty Crews (employees), Cr 1139.

CHARGE: Between 5-6-55 and 5-10-55, *amphetamine sulfate tablets* were dispensed 5 times without a prescription.

PLEA: Guilty—by Jones Truck Stop and Jones to all counts, by Crews to count 3, and by Phillips to count 4.

DISPOSITION: 4-30-56. Partnership and Jones fined $1,000 jointly and placed on probation for 2 years; Crews and Phillips each fined $50 and placed on probation for 2 years.

4979. (F.D.C. No. 38545. S. Nos. 4-777 M, 5-734 M, 5-737 M, 5-739 M.)

INFORMATION FILED: 11-29-55, N. Dist. Ill., against Althafer's Drugstore (a partnership), Crystal Lake, Ill., and Richard W. Copeland (a partner in the partnership) and Gertrude M. H. Copeland (apprentice pharmacist). 55 C.R. 640.

CHARGE: Between 12-10-54 and 2-5-55, *Pentids tablets* (counts 1, 2, and 3) were dispensed 3 times and *Pondets troches* (penicillin-bacitracin troches) (count 4) were dispensed once without a prescription.

PLEA: Nolo contendere—by partnership to each of 4 counts of information, by Richard W. Copeland to counts 1, 2, and 4, and by Gertrude M. H. Copeland to count 3.

DISPOSITION: 12-9-55. Partnership—$100 fine, plus costs; Richard W. Copeland—$200 fine; and Gertrude M. H. Copeland—$100 fine.

5043. (F.D.C. No. 38143. S. Nos. 59-899 L, 59-904 L, 59-907/8 L.)

INFORMATION FILED: 9-28-55, W. Dist. N.C., against Kiser Drug Co. (a partnership), Charlotte, N.C., and Edna Puckett (an employee), Cr. 770.

CHARGE: Between 6-11-54 and 6-25-54, *phenobarbital tablets* were dispensed 3 times and *Gantrisin tablets* were dispensed once without a prescription.

PLEA: Nolo contendere—by each defendant to all counts.

DISPOSITION: 10-10-55. Partnership fined $200; Puckett fined $250 and placed on probation for 2 years.

5050. (F.D.C. No. 38568. S. Nos. 4-947/8 M, 5-049 M, 5-051 M, 5-054/5 M.)

INFORMATION FILED: 1-30-56, N. Dist. Ill., against Triangle Pharmacy (a partnership), Chicago, Ill., Bernard Rosenbloom (partner and pharmacist), Michael Joseph Rio (employee), and Salvatore Pape (apprentice pharmacist), 56 C.R. 49.

CHARGE: Between 1-7-55 and 1-18-55, *penicillin G potassium tablets* (counts 1 and 5) and *apiol-ergot compound capsules* (counts 2 and 3) were each dispensed twice and *Sec-Amobarb capsules* (count 4) and *Metandren Linguets* (count 6) were each dispensed once, without a prescription.

PLEA: Guilty—by partnership to all counts of the information; by Rosenbloom to counts 1, 2, and 3; by Rio to counts 4 and 6; and by Pape to count 5.

DISPOSITION: 3-7-56. Parnership fined $100; Rosenbloom, $500, plus costs; Rio, $200; and Pape, $100.

5056. (F.D.C. No. 37830. S. Nos. 63-088 L, 63-751 L, 63-951 L, 72-780 L, 72-785 L, 72-790 L.), Cr. 18341.

INFORMATION FILED: 4-1-55, E. Dist. Ill., against Douglas Drug Co. (a partnership), Mt. Vernon, Ill.,

Douglas A. Sapper, Sr. and Douglas A. Sapper, Jr. (partners in the partnership), and Doran Laverne Kernodle (a pharmacist for the partnership).

CHARGE: Between 9-3-54 and 10-11-54, *diethylstilbestrol tablets* (counts 1 and 3) and *sulfisoxazole tablets* (counts 5 and 6) were each dispensed twice and *thyroid tablets* (count 2) were dispensed once without a prescription, and *dextro-amphetamine sulfate capsules* (count 4) were dispensed once upon request for a prescription refill without authorization by the prescriber.

PLEA: Guilty—by partnership to all 6 counts of the information; by Douglas A. Sapper, Sr., to counts 1, 2, 3, and 4; by Douglas A. Sapper, Jr., to count 5; and by Doran Laverne Kernodle to count 6.

DISPOSITION: 4-19-55. Fine of $600 against partnership, $400 against Douglas A. Sapper, Sr., $100 against Douglas A. Sapper, Jr., and $100 against Doran Laverne Kernodle. The fine against the partnership was abated by the fines against the individuals.

4524. (F.D.C. No. 37168. S. Nos. 85-015/16 L, 85-031/32 L, 85-045 L, 85-047 L, 85-149/50 L.)

INFORMATION FILED: 9-30-54, Dist. Del., against Bartley Drug Store (a partnership), Wilmington, Del., and Italo R. Debartolomeis and Salvatore Leoncavallo (partners), Cr. 993.

CHARGE: Between 11-25-53 and 12-17-53, *Dexedrine Sulfate tablets* were dispensed 4 times (counts 1 to 4, incl.) and *phenobartial tablets* were dispensed 4 times (counts 5 to 8, incl.) upon requests for prescription refills without authorization by the prescribers.

PLEA: Nolo contendere—by partnership to counts 1 to 8, incl.; by Debartolomeis to counts 2, 3, 6, and 7; by Leoncavallo to counts 1, 4, 5, and 8.

DISPOSITION: 11-12-54. Partnership—$400 fine; individual defendants—imposition of sentence suspended and each placed on probation for 2 years.

4532. (F.D.C. No. 35749. S. Nos. 14-665 L, 69-275 L.)

INFORMATION FILED: 12-54-53 Dist. Colo., against University Park Medical Clinic Pharmacy (a partnership), Denver, Colo., and Jake DeGarmo (pharmacist), Cr. 13925.

CHARGE: Between 12-26-52 and 1-2-53, *pentobarbital sodium capsules* and *secobarbital sodium capsules* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty by each defendant.

DISPOSITION: 8-18-54. Partnership fined $1,000; individual placed on probation for 3 years.

4565. (F. D. C. No. 34322. S. Nos. 14-804/7 L, 14-809/11 L.)

INFORMATION FILED: 4-13-53, Dist. Kan., against Self Service Drugs, a partnership, Hutchinson, Kan., Marvin W. Gates, manager of the partnership, and Earl R. Hanna and Frank Sewell, pharmacists, Cr. 9011.

CHARGE: Between 3-26-52 and 4-10-52, *dextro-amphetamine sulfate tablets* were dispensed 4 times (counts 1, 2, 3, and 4) and *Mebaral tablets* were dispensed 3 times (counts, 5, 6, and 7) without a prescription. Such dispensing resulted in the drugs being misbranded as follows: 502 (b) (2)—the drugs failed to bear labels containing an accurate statement of the quantity of contents; and, 502 (f) (1)—the labeling of the drugs failed to bear adequate directions for use.

The drugs were further misbranded as follows: 502 (e) (2)—the label of the *dextro-amphetamine sulfate tablets* failed to bear the common or usual name of each active ingredient; and, 502 (d)—the *Mebaral tablets* contained a chemical derivative of barbituric acid, and the label of the tablets failed to bear the name, and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

PLEA: Nolo contendere, by partnership to counts 1, 2, 3, 4, and 5; by Gates to counts 1, 2, 3, and 4; by Hanna to counts 1, 3, 4, 6, and 7; and by Sewell to counts 2 and 5.

DISPOSITION: 6-23-63—court fined partnership $175, Gates $100, and Sewell $50, and assessed costs against each defendant. 10-12-54—Hanna fined $50.

4615. (F. D. C. No. 36677. S. Nos. 59-487 L, 59-572/5 L, 60-318 L.)

INFORMATION FILED: 4-1-55, E. Dist. S. C., against Colonial Drug Store (a partnership), Florence, S. C., Duncan S. Farrow (partner and manager), and Ward S. Woodard (clerk for the partnership), Cr. 20553.

CHARGE: Between 10-26-53 and 12-4-53, *dextro-amphetamine sulfate tablets* were dispensed 3 times, *sulfisoxazole tablets* were dispensed twice, and *penicillin tablets* were dispensed once without a prescription.

PLEA: Guilty—by partnership and Farrow to all counts of the information and by Woodard to 3 counts involving dispensing of *detro-amphetamine sulfate tablets* and *sulfisoxazole tablets.*

DISPOSITION: 4-25-55. Farrow—$200 fine; partnership and Woodard—each $100 fine.

4630. (F. D. C. No. 36672. S. Nos. 64–271/2 L.)

INFORMATION FILED: 2-3-55, Dist. Alaska, against Rexall Drug Store (a partnership), Anchorage, Alaska, Charles J. Abel (a partner in and manager of the partnership), and Charles W. Barton and Richard C. Cornell (pharmacists for the partnership), Cr. 3151.

CHARGE: Between 8-27-53 and 8-29-53, *penicillin G potassium tablets* (count 1) and a quantity of a drug consisting of *dibenzylethylenediamine dipenicillin G, procaine penicillin G, and potassium penicillin G for aqueous injection* (count 2) were each dispensed once without a prescription.

PLEA: Guilty—by partnership, Charles J. Abel, and Charles W. Barton to count 1, and by Richard C. Cornell to count 2.

DISPOSITION: 3-14-55, Cornell fined $250; 6-24-55, partnership fined $350 and Abel and Barton each fined $50.

4640. (F. D. C. No. 35805. S. Nos. 69–804/6 L, 69–808 L, 69–810 L, 69–812 L.)

INFORMATION FILED: 10-14-53, Dist. Utah, against Clearfield Pharmacy, a partnership, Clearfield, Utah, and Glade R. Day and Leslie B. Otte (partners), Cr. 51-54.

CHARGE: Between 11-12-52 and 8-27-53, *secobarbital sodium capsules* were dispensed 3 times (counts 2, 3, and 6), *sulfadiazine tablets* were dispensed twice (counts 1 and 5), and a quantity of *procaine penicillin G* was dispensed once (count 4), without a prescription.

PLEA: Guilty—by partnership to all 6 counts of information; by Day to counts 1, 2, 3, 4, and 6; and by Otte to count 5.

DISPOSITION: 6-7-54. Partnership fined $6,000; Day given suspended prison sentence of 5 years and placed on probation for 5 years; Otte fined $1,000 and given suspended prison sentence of 1 year and placed on probation for 1 year.

4683. (F. D. C. No. 37218. S. Nos. 85–748/9 L.)

INFORMATION FILED: 3-14-55, Dist. Wyo., against Hospital Pharmacy (a partnership), Sheridan, Wyo., Cr. 6487.

CHARGE: Between 3-30-54 and 4-7-54, *pentobarbital sodium suppositories* were dispensed once upon request for a prescription refill without authorization by the prescriber, and *dextro-amphetamine sulfate tablets* were dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 3-21-55. $50 fine.

4687. (F. D. C. No. 37189. S. Nos. 89–815 L, 89–861 L, 89–874 L, 89–886 L, 89–903 L, 89–958 L.)

INFORMATION FILED: 5-13-55, Dist. Mass., against Costanza Pharmacy (a partnership), Revere, Mass., and Charles A. Costanza and Louis Costanza (partners in the partnership), Cr. 55-110-5.

CHARGE: Between 3-24-54 and 4-20-54, *Premarin tablets* were dispensed once without a prescription, and *Benzedrine Sulfate tablets* were dispensed 3 times and *pentobarbital sodium capsules* and *penicillin tablets* were each dispensed once upon requests for prescription refills without authorization by the prescriber.

PLEA: Guilty—by partnership to all 6 counts of information; by Charles A. Costanza to 3 counts; and by Louis Costanza to 3 counts.

DISPOSITION: 10-5-55. Partnership fined $100; each individual fined $250.

4698. (F. D. C. No. 37204. S. Nos. 72–792/3 L, 72–796/7 L.)

INFORMATION FILED: 1-12-55, E. Dist. Ill., against Sweney Bros. & Co. (a partnership), Salem, Ill., and A. J. Sweney and Lee Harper Sweney (partners), Cr. 18295.

CHARGE: Between 6-22-54 and 6-28-54, *Sulfisoxazole tablets* were dispensed twice and *dextro-amphetamine sulfate tablets* and *thyroid tablets* were each dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 2-16-55. $400 fine.

4705. (F. D. C. No. 37164. S. Nos. 83–463/4 L. 83–466/8 L.)

INFORMATION FILED: 12-15-54, W. Dist. Wis., against City Drug Store (a partnership), Hurley, Wis., Cr. 13444.

CHARGE: Between 3-2-54 and 3-9-54, *Dexedrine Sulfate tablets,* and *seco-barbital sodium capsules* were each dispensed twice and *Neotresamide tablets* were dispensed once without a prescription.

PLEA: Guilty.

DISPOSITION: 6-27-55. $275 fine.

4730. Dried herbs. (F. D. C. No. 36575. S. Nos. 58–274 L, 58–896 L.)

INFORMATION FILED: 8-9-54, N. Dist. Ill., against Z. G. Stanis Co., a partnership, Chicago, Ill., Cr. 464.

ALLEGED VIOLATION: Between 1947 and 11-19-53, the defendant, while holding a number of bags of Seventeana tea for sale after shipment in interstate commerce, caused such article to be held in a building accessible to insects and to be exposed to contamination by insects; caused a quantity of the

article to be repacked into boxes under the designation "Z-G Herbs" and to be accompanied by a leaflet; and caused a number of boxes of the article accompanied by the leaflet to be introduced into interstate commerce for delivery to Milwaukee, Wis.

LABEL IN PART: (Bag) "102 Lbs. Seventeana Tea"; (box) "Z–G Herbs Net Weight 4 Oz. No. 17 Herb Tea."

ACCOMPANYING LABELING: Leaflet entitled "Temporary List of Z. G. Herbs and Stanis Products."

CHARGE: 501 (a) (1)—contained insects and insect parts while held for sale and when shipped by the defendant as described above: 501 (a) (2)—held under insanitary conditions; and 502 (a)—the accompanying labeling contained false and misleading representations that the article was an adequate and effective treatment for stomach disorders.

PLEA: Nolo contendere.

DISPOSITION: 3-8-55. $400 fine, plus costs.

4747. (F. D. C. No. 29458. S. Nos. 15–860 K, 41–953/4 K, 41–964/5 K, 60–679/80 K.)

INFORMATION FILED: 9-11-50, E. Dist. Wis., against Lyon Drug Co., a partnership, Milwaukee, Wis., and Walter G. Kopling, a partner. Cr. 361–T.

CHARGE: Between 10-17-49 and 12-19-49, 3 sales of *Seconal Sodium capsules* and 4 sales of *Nembutal capsules* were made by the defendants without obtaining a physicians prescription, which acts resulted in the drugs being misbranded as follows: 502 (b) (2)—each drug failed to bear a label containing a statement of the quantity of contents; 502 (d)—each drug contained a chemical derivative of barbituric acid, and its label failed to bear

the name and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning: May be habit forming"; and 502 (f) (1) —the labeling of each drug failed to bear adequate directions for use.

DISPOSITION: On 10-9-50, the defendant filed a motion to suppress evidence. The matter came on for hearing before the court on 3-1-54; and, on 6-25-54, the court handed down the following opinion in denial of the motion:

* * * * *

On 10-12-54 a plea of guilty was entered by the partnership to counts 1, 2, 3, and 4 of the information and, by agreement of the parties, the charges against the partnership on counts 5, 6, and 7 and against the individual on all counts were dismissed. On 12-20-54, the court fined the partnership $700.

2. For the period 1950-1957, we have noted the following unreported cases involving successful prosecution of partnerships for violation of the Meat Inspection Act, 21 U. S. C. 71, *et seq*:

United States v. *Gavosto & Moretto Co.*, W. D. Wash., Cr. 48161, 1950;

United States v. *Hub Sales Company*, E. D. Wash., 1952;

United States v. *Jason Supply Company, Capt. H. Hansen & Son, D. Mass., Cr.* 53-41-M, 1953;

United States v. *Quality Packing Company*, E. D. Mich., 1953;

United States v. *M. Wagenheim Sons*, D. N. J., Cr. 14-53, 1953;

United States v. *Harry M. Carpenter and Sons*, S. D. Ga., Cr. 4045, 1954;

United States v. *Wallace Beef Company,* E. D. Penna., Cr. 17583, 1954;

United States v. *Superior Meat Processors,* S. D. N. Y., 1954;

United States v. *Globe Packing Company,* S. D. Cal., Cr. 24110-CD, 1955;

United States v. *Pfister Meat Company,* E. D. Mo., Cr. 27809, 1954;

United States v. *Colonial Corned Beef Co.,* N. D. Ill., Cr. 45, 1955;

United States v. *Arco Dog Food Co.,* N. D. N. Y., Cr. 31789, 1955;

United States v. *United Provision Company,* E. D. Pa., Cr. 18547, 1956.

3. The following cases represent successful prosecution of partnerships, during the period 1953-1957, for violations of the Federal Seed Act, 7 U. S. C. 1551, *et seq:*

United States v. *Wallace Seed Company,* a partnership, M. D. Tenn., Cr. 1228, 1957;

United States v. *Jenks-White Seed Company,* a nership, D. C. Or., Cr. 18207, 1957;

United States v. *Lankart Seed Farms, Ltd.,* a Limited partnership, E. D. Tex., Waco Div., Cr. 4750, 1957;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5471, 1953;

United States v. *William G. Scarlett & Company,* D. Md., Cr. 22459, 1953;

United States v. *Green & Carver Seed Company,* E. D. Tenn., Cr. 8101, 1953;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5205, 1954;

United States v. *T. W. Wood and Sons,* E. D. Va., Cr. 5602, 1954;

United States v. *Wertheimer-McGuin Seed Company,* N. D. Ind., Cr. 1530, 1954;

United States v. *The Wax Company,* N. D. Miss., 1955;

United States v. *Jack W. Derryberry Seed Co.,* M. D. Tenn., Cr. 12034, 1955;

United States v. *Roberts Seed Company,* D. N. Mex., Cr. 18775, 1955;

United States v. *William G. Scarlett & Company,* D. Md., Cr. 23308, 1956.

4. Successful prosecutions of partnerships under the Animal Quarantine laws, 21 U. S. C. 111, *et seq*:

United States v. *New Albany Sales Co.,* a partnership, N. D. Miss., W. Div., Cr. 8335, 1955;

United States v. *Faust, Aydlett and Rochelle, a partnership, Brite and Tatum, a partnership, et al.,* E. D. N. C., New Bern Div., Cr. 5906, 1955;

United States v. *Western Livestock Order Buyers, a corporation, Earl Britton, Montana Livestock Auction Co., a partnership, and Union Pacific R. Co., a corporation,* D. Utah, Cr. 86-55, 1956.

5. In *United States* v. *Carter-Jones Drilling Co., a partnership, et al.,* E. D. Tex., Tyler Div., Cr. 5872, 1953, the partnership defendant was fined $2,400 for violations of the Connally "Hot Oil" Act, 15 U. S. C. 715, *et seq.* This Act requires proof that the violation was "knowingly" committed, 15 U. S. C. 715e, and it defines "person" to include "an individual, partnership, corporation or joint-stock company," 15 U.S.C. 715a (4).

United States v. *Gravis and Mitchell, a partnership, et al.*, E. D. La., Baton Rouge Div., Cr. 24,795, 1953, another case arising out of the requirements imposed by the "Hot Oil" Act, involved a prosecution of a partnership and others for conspiracy to violate 18 U. S. C. 1001 (knowingly making false statements in a matter within the jurisdiction of a department or agency of the United States). The partnership defendant was found guilty on numerous counts and fined a total of $20,000. Like 18 U. S. C. 835, 18 U. S. C. 1001 begins with the word "Whoever".

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 474435 12p